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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Michael P Lasso,

10 Plaintiff,

11 v.

12 Michael J Astrue,

13 Defendant.

No. CV-12-02291-PHX-DGC

ORDER

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15 Plaintiff has filed a motion for attorney's fees pursuant to the Equal Access to
16 Justice Act ("EAJA"), 28 U.S.C. § 2412. Doc. 25. Defendant has filed a response.
17 Doc. 26. Plaintiff has replied. Doc. 25. For the reasons stated below, the Court will
18 grant the motion.

19 **I. Background.**

20 An administrative law judge ("ALJ") denied Plaintiff's application for social
21 security benefits on July 22, 2011. Doc. 1 at 1. That decision became final when the
22 Appeals Council denied review on August 27, 2012. *Id.* at 2. Plaintiff brought an action
23 for judicial review in this Court pursuant to 42 U.S.C. § 405(g). *Id.* The Court ruled in
24 favor of Plaintiff and remanded the case for further proceedings. Doc. 21. Plaintiff has
25 now filed an application for attorney fees under the EAJA, requesting \$6,931.63 in
26 attorney's fees for 37.20 hours of work performed. Doc. 25 at 1.

27 **II. Legal Standard.**

28 28 U.S.C. § 2412(d)(1)(A) provides that "a court shall award to a prevailing party

1 other than the United States fees and other expenses . . . unless the court finds that the
2 position of the United States was substantially justified or that special circumstances
3 made an award unjust.” “An applicant for disability benefits becomes a prevailing party
4 for purposes of the EAJA if the denial of her benefits is reversed and remanded
5 regardless of whether disability benefits ultimately are awarded.” *Gutierrez v. Barnhart*,
6 274 F.3d 1255, 1257 (9th Cir. 2001). In the Ninth Circuit, “attorneys’ fees are to be
7 awarded to a party winning a sentence-four remand unless the commissioner shows that
8 his position with respect to the issue on which the district court based its remand was
9 substantially justified.” *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002) (internal
10 citations and quotations omitted). The Supreme Court has stated that “a position can be
11 justified even though it is not correct, and we believe it can be substantially . . . justified
12 if a reasonable person could think it correct, that is, if it has a reasonable basis in law and
13 fact.” *Pierce v. Underwood*, 487 U.S. 552, 566 n.2 (1988).

14 **III. Analysis.**

15 The ALJ rejected Plaintiff’s claim because she found that Plaintiff could perform
16 some work, that he could work independently, and that he could adjust to other work than
17 that which he had previously been performing. Doc. 21 at 3. In making these findings,
18 the ALJ discredited the medical opinion of Dr. Eric Feldman, one of Plaintiff’s treating
19 physicians. On review, the Court found that the ALJ failed to articulate “a detailed and
20 thorough summary of the facts and conflicting clinical evidence” that supported her
21 decision to discredit Dr. Feldman’s opinion. *Id.* at 7. The Court remanded the case for
22 further proceedings consistent with its order. *Id.* at 17.

23 Defendant argues that Plaintiff should not be awarded attorney’s fees because her
24 position was substantially justified. Doc. 26 at 4-6. The Court disagrees. Defending
25 “basic and fundamental [procedural] errors” is not substantially justified. *Shafer v.*
26 *Astrue*, 518 F.3d 1067, 1071-72 (9th Cir. 2008) (holding that the ALJ committed
27 fundamental error by discrediting Claimant’s testimony without giving clear and
28 convincing reasons and that the Commissioner was not substantially justified in

1 defending it); *see also Jager v. Astrue*, 290 F.App'x 27, 28 (9th Cir. 2008). “Where, as
2 here, the ALJ's decision was reversed on the basis of procedural errors, the question is *not*
3 whether [Defendant's] position as to the merits of [Plaintiff's] disability claim was
4 substantially justified. Rather, the relevant question is whether [Defendant's] decision to
5 defend on appeal the procedural errors committed by the ALJ was substantially justified.”
6 *Shafer*, 518 F.3d at 1071-72 (emphasis original). A court should not need to speculate as
7 to the reasons the ALJ rejected the claimant's allegations. *Corbin v. Apfel*, 149 F.3d
8 1051, 1052 (9th Cir. 1998) (holding that the Commissioner was not substantially justified
9 in defending an ALJ's decision where he rejected Claimant's testimony without specific
10 findings).

11 The ALJ in this case did not give legally sufficient reasons for rejecting Dr.
12 Feldman's opinion, and offered only the conclusory statement that the opinion was not
13 supported by “the greater objective medical evidence of record.” The ALJ did not
14 indicate whether or how specific findings failed to support Feldman's opinion. Just as
15 the Commissioner was not substantially justified in defending procedural errors in *Shafer*,
16 Defendant was not substantially justified in defending this case.¹

17 Plaintiff's counsel submitted an itemized statement showing 37.20 hours were
18 worked. Doc. 25-1 at 6-7. Having reviewed counsel's statement and considered the fee
19 award factors, *see Hensley v. Eckerhart*, 461 U.S. 424, 429-30 (1983), the Court finds the
20 requested amount to be reasonable.

21 **IT IS ORDERED:**

- 22 1. Plaintiff's application for attorney fees (Doc. 25) is **granted**.
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26 ¹ Defendant argues that the Court was primarily concerned with “articulation
27 standards,” and cites Seventh Circuit case law for the proposition that deficiencies in
28 articulation alone generally do not warrant an award of attorney fees. This argument is
not persuasive. Legal errors such as those committed by the ALJ here are procedural
errors, and defense of such is not substantially justified under established Ninth Circuit
precedent.

